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Torts

TORTS

I. Physical Harm

A. Procedure

In *Felder v. Great American Insurance Company*[1] the complaint alleged that Mr. and Mrs. Felder had given a note and a mortgage on their home to Home Federal Savings and Loan and shortly thereafter had procured a health and accident policy from the defendant through Home Federal as agent. After becoming entitled to payments under the policy, the Felders had received policy benefits for three months and then had been told by Home Federal that further claims would be useless. As a result the Felders allegedly had to sell their home at a loss to prevent foreclosure. The complaint contained three separate causes of action, fraud and deceit, breach of contract accompanied by a fraudulent act and negligence.

The district court found that the complaint stated a cause of action in fraud. The requisite elements in South Carolina for an action in fraud are: (1) A representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity; (5) his intent that it should be acted upon by the person; (6) the hearer's ignorance of its falsity; (7) his reliance on its truth; (8) his right to rely thereon; (9) and his consequent and proximate injury.[2] Normally the failure of an insurance company to pay money due under a policy does not support a fraud action,[3] because of a lack of a representation or the speaker's knowledge of its falsity. But here, the insurance company had made a lump sum payment after the statements were made by Home Federal. As proper allegations of the knowledge of the falsity of these statements had been made, an action for fraud was validly maintainable.

The court found that an action for breach of contract accompanied by a fraudulent act was also properly alleged. It resolved the apparent conflict with the fraud action by pointing out that the breach was in not paying on time rather than not paying at all.

1. 260 F. Supp. 575 (D.S.C. 1966).

2. *Id.* at 577, *accord, e.g.,* Jones v. Cooper, 234 S.C. 477, 109 S.E.2d 5 (1959).

3. *See, e.g.,* Corley v. Coastal States Life Ins. Co., 244 S.C. 1, 135 S.E.2d 316 (1964).

The cause of action for negligence was dismissed. The court required "a duty arising out of the relation created by the contract which exists apart from the contract."[4] The court stated that no authority supporting a co-existing duty had been called to its attention. It would appear that cases involving negligent misrepresentation would be germane on this point.[5] The separate duty here would be to use due care with respect to statements made concerning rights under the contract. A more difficult question would be whether the South Carolina Supreme Court would impose liability for negligent misrepresentations leading to economic harm.[6]

In the case of *Locklair v. Locklair*[7] the plaintiff, a resident of South Carolina, was injured in an automobile accident which occurred in Georgia while she was riding as a guest passenger in her husband's automobile. The plaintiff sought to bring action against her husband in the district court. Under the South Carolina conflicts rule the interspousal immunity law of Geogia was applied and recovery was denied. The court stated that none of the plaintiff's constitutional rights had been violated by the application of Georgia law which clearly provided that she had no cause of action against her husband under the facts in this case.[8]

The case of *Kapuschinsky v. United States*[9] involved an action under the Federal Tort Claims Act.[10] Liability was established but a question arose concerning the amount of damages. The court reiterated the elements determining the amount of damages a personal injury plaintiff could recover. These included pain and suffering, medical expenses and any future damages resulting from permanent injuries. The future damages were measured as those which "it [was] reasonably certain will

4. Felder v. Great American Ins. Co., 260 F. Supp. 575 (D.S.C. 1966).

5. The cases are collected in W. PROSSER, LAW OF TORTS 721-24 (3d ed. 1964). Manock v. Amos T. Bridge's Sons, Inc., 86 N.H. 411, 169 A. 881 (1934) seems especially appropriate.

6. The South Carolina cases cited by the court in the portion of the opinion devoted to the negligence action are not dispositive of the question. Only Lawson v. Metropolitan Life Ins. Co., 169 S.C. 540, 169 S.E. 430 (1933) involves a negligent misrepresentation and the only loss was benefits under the contract. In the instant case the loss was not of contract benefits.

7. 256 F. Supp. 530 (D.S.C. 1966).

8. GA. CODE ANN. § 53-501 (1933); *e.g.*, Wallach v. Wallach, 94 Ga. App. 576, 95 S.E.2d 750 (1956); Wright v. Wright, 85 Ga. App. 721, 70 S.E.2d 152 (1952).

9. 259 F. Supp. 1 (D.S.C. 1966).

10. 28 U.S.C. §§ 2671-80 (1964).

of necessity result from the injuries."[11] This included the accompanying pain and suffering which would, with reasonable certainty, result.

Thus the Court stated that the four-year-old child who suffered deformed extremities which would give rise to traumatic arthritis and future disproportionate body measurements was entitled to damages of $175,000.

In *McVey v. Whittington*[12] the plaintiff was struck by the defendant's automobile while she was attempting to push a stalled vehicle off the highway. The evidence on the question of the defendant's negligence was to the effect that the vehicle the plaintiff was pushing had five rear lights and it was a clear night. The plaintiff was wearing white slacks and the vehicle had a white top. The South Carolina Supreme Court affirmed the decision of the common pleas court holding that this raised a jury question and entered judgment for plaintiff on the jury verdict.

In *Sox v. Hertz Corporation*[13] the defendant sought to make itself a third party plaintiff and have the mother of the deceased, who was driving the automobile in which the deceased was killed, made a third party defendant. The motion to interplead was denied on the grounds that injustice might arise if the jury were forced to consider that the mother was liable and that the third-party complaint against the mother would lead to confusion and possible prejudice. The court stated that under South Carolina law, plaintiff may elect to sue either of joint tort-feasors singly and one defendant cannot defeat that right by seeking to bring in another defendant.[14]

In *Hughey v. Ausborn*[15] the court held that punitive damages were not available on a suit for loss of consortium.[16]

B. Joint Tort-Feasors

In *Ayers v. Pastime Amusement Company*,[17] an action was brought against exhibitors and distributors of motion pictures

11. Kapuschinsky v. United States, 259 F. Supp. 1, 6 (1966).
12. 248 S.C. 447, 151 S.E.2d 92 (1966).
13. 262 F. Supp. 531 (1967).
14. Pendleton v. Columbia Ry. Gas & Elec. Co., 133 S.C. 326, 131 S.E. 265 (1925); National Bank v. Southern Ry., 107 S.C. 28, 91 S.E. 972 (1917).
15. 154 S.E.2d 839 (S.C. 1967).
16. The case is more fully discussed under *Damages, supra,* p. 563.
17. 259 F. Supp. 358 (D.S.C. 1966).

for alleged violation of a federal anti-trust statute. An agreement, termed a covenant not to sue, was executed between the plaintiffs and all but two of the defendants. The remaining two defendants sought summary judgment on the grounds that the instrument was a release. The district court held that federal law controlled the effect of the instrument, and that, while no decision of the supreme court or Court of Appeals for the Fourth Circuit was precisely in point, the instrument was clearly not operative as a release. The court noted, in passing, that had South Carolina law controlled the result would have been the same.[18]

In the case of *Travelers Insurance Company v. Allstate Insurance Company*,[19] the plaintiff company brought an action alleging unjust enrichment and seeking contribution when it had to pay the entire judgment against five joint tort-feasors, only two of which were insured by the plaintiff. In holding the action demurrable the court reasoned that, since South Carolina still recognizes the common law principle precluding contribution among joint tort-feasors,[20] the defendant's insured was discharged. Since the defendant insurance company had only contracted to pay actual obligations of its insured, to require it to pay now would amount to the court's rewriting of the contract.

C. Duty of Care

In *Kimbrell v. Bi-Lo, Inc.*[21] the plaintiff sustained a fall in the defendant's self-service grocery. The access to the defendant's store was through double doors and the sidewalk was set six inches above the floor of the store. This difference in elevation made necessary a ramp leading from the sidewalk to the floor of the store. The ramp was constructed of plywood and extended four feet into the store. There were no handrails or warning signs present. The plaintiff, an elderly woman, entered the store and decided to select a shopping cart from a group to the immediate right of the ramp. She turned to go to the carts and walked

18. This is presumed to be the law in South Carolina though the issue has never come before the South Carolina Supreme Court. *See* McWhirter v. Otis Elevator Co., 40 F. Supp. 11 (D.S.C. 1941).

19. 155 S.E.2d 591 (S.C. 1967).

20. The text writers have condemned the rule and a majority of jurisdictions now permit some form of contribution. *See* W. PROSSER, LAW OF TORTS § 47 (3d ed. 1964).

21. 248 S.C. 365, 150 S.E.2d 79 (1966).

off the side of the ramp and fell. The plaintiff recovered $3,500 actual damages and the defendant appealed a denial of a motion for directed verdict and for judgment n.o.v. The court stated that:

> It is reasonably inferable that the miscalculation on the part of the plaintiff was induced by the similarity of appearance of the two surfaces, the absence of any warning or handrail, and the invitation on the part of the defendant to proceed off the side of the ramp to the carts.[22]

Thus, the court held that the question of negligence was for determination by the jury. For one dissenting justice, the obviousness of the hazards led to the conclusion that the plaintiff was guilty of contributory negligence.

An automobile passenger brought action against a contractor in *Citizens and Southern National Bank v. Dickerson, Inc.*[23] The passenger was struck by a board which allegedly protruded from the guard rail running along the center of a bridge which was being widened by the defendant. The issue presented was whether the evidence was sufficient to justify submission to the jury. The court found evidence that the guard rail narrowed the lane of south bound traffic, that the contractor removed the flambeau and flashing lights from the guard rail, and that the contractor failed to make daily inspection of the condition of the bridge, justified the submission of the issue of negligence to the jury. The court found that an award of $260,000 actual and $5,000 punitive damages was not excessive in the light of the permanent brain damage and facial disfigurement of the plaintiff.

In *Lynch v. Motel Enterprises*[24] where a mentally defective child drowned in defendant's swimming pool, the court pointed out the duty of care of a landowner toward children. The proprietor is liable for injuries to children, whether licensees or trespassers, when (1) he brings or artificially creates something which is attractive and dangerous to children without taking reasonable pains to guard them, or (2) a dangerous thing, although not an attractive nuisance, is so "left exposed" that children are likely to come in contact with it and their contact with

22. *Id.* at 371, 150 S.E.2d at 81.
23. 370 F.2d 692 (4th Cir. 1966).
24. 248 S.C. 490, 151 S.E.2d 435 (1966).

it is obviously dangerous to them, and reasonable pains are not taken to guard them.[25]

The case of *Carter v. Beals*[26] involved an action arising out of a collision between the plaintiff's northbound automobile and the defendant's eastbound police automobile which was traveling on a through street. The issues involved were: (1) Did the evidence require the conclusion, as a matter of law, that the plaintiff was guilty of contributory negligence and willfulness in failing to yield the right of way to the defendant; and (2) Did the trial judge err in failing to direct a verdict as to punitive damages or for judgment n.o.v. on the grounds that there was no evidence of negligence, gross negligence, willfulness or recklessness on the part of the defendant to support an award of punitive damages. The court found that there was evidence to the effect that approaching the stop sign on the street on which the plaintiff was traveling one's vision of traffic approaching from the left was obstructed, and that the defendant's car came from the left. There was also uncontradicted evidence that the defendant was exceeding the speed limit while chasing a car. There was also evidence that the police car did not have its siren on or its red light flashing. The court held that, though a motorist approaching a stop sign must yield the right of way to vehicles approaching so closely as to constitute an immediate hazard, the question whether a particular vehicle constitutes such a hazard is ordinarily one for the jury. Also, if the jury found that the defendant violated the speed limit without using the warning siren and red light, the award of punitive damages was justified.

In *Summers v. Motor Ship Big Ron Tom*[27] a passenger on a fishing boat brought action against the owner for personal injuries sustained from a fall while standing on the bow of the boat. The court pointed out that the operator owed his passengers the highest degree of care and must have warned them of dangers which were not readily apparent.[28] However, here the

25. This second basis of liability was recently applied in Everett v. White, 245 S.C. 331, 140 S.E.2d 331 (1965) which is surveyed in Haimbaugh, *Annual Survey of the Law, Torts* 18 S.C.L. REV. 141, 156 (1966).

26. 248 S.C. 526, 151 S.E.2d 671 (1966).

27. 262 F. Supp. 400 (1967).

28. The court cites on this point, Maibrunn v. Hamburg-American S.S. Co., 77 F.2d 304 (2d Cir. 1935) and Pacific S.S. Co. v. Holt, 77 F.2d 192 (9th Cir. 1935). An early South Carolina case, McClenaghan v. Brock, 5 Rich. 17, 27 (S.C. 1851) indicates that the carrier's duty to passengers was "to carry each and all of them safely and securely, as far as human care and foresight could go."

court found that the plaintiff's injury was due solely to her own failure to exercise care for her safety in that she disregarded a warning to be seated and continued to jump up and down with the motion of the boat just before she fell.

The plaintiff in *Rogers v. United States*[29] had previously been convicted on a charge of interstate transportation of a stolen automobile and had received a probationary sentence. Since he was no longer confined and did not have transportation to his home, the federal court in Columbia had issued an order directing the marshal of the court to provide the plaintiff with transportation. There was no transportation to the plaintiff's home available and the plaintiff elected to spend the night in Sumter, South Carolina, where he had been imprisoned. In Sumter the plaintiff was told that he could spend the night in the jail or with any friends he might have in Sumter. The plaintiff stated that he would stay with one Brabham and accompanied Brabham to his home. While there, the plaintiff was assaulted repeatedly by Brabham who allegedly was "mentally and sexually unbalanced, being what is commonly referred to as a sadist." The plaintiff brought action under the Federal Tort Claims Act for the injuries he sustained. The plaintiff alleged he was in legal custody of the United States Marshal by the court order for transportation and should recover despite Section 2680 of the Federal Tort Claims Act.[30] The court granted the defendant's motion for summary judgment holding that where the defendant had breached no legal duty, the negligent act or omission required by the Federal Tort Claims Act could not be established.

D. Statutory Standards of Care

In *Kennedy v. Carter*[31] a guest passenger brought action to recover for personal injuries as a result of an automobile accident. The plaintiff alleged reckless and wanton acts on the part of the host driver. The South Carolina Supreme Court pointed out that the only duty that an operator of a vehicle owes to a guest passenger is not to injure the guest wilfully or by conduct in reckless disregard to the guest's rights. The court then found

29. 267 F. Supp. 25 (D.S.C. 1967).

30. 28 U.S.C. § 4283 (1964). "Exceptions—The provisions of this chapter and Section 1346(b) of this title shall not apply to— . . . .(b) any claim arising out of assault, battery, false imprisonment. . . ."

31. 153 S.E.2d 312 (S.C. 1967).

that evidence that the host driver was in the proper lane, had his vehicle under control and swerved into the traffic sign only to avoid a head-on collision with another vehicle in the improper lane, failed to establish intentional or reckless misconduct on the host driver's part. The excessive speed of the defendant's automobile was considered a circumstance of the accident and the other driver's negligence was the sole proximate cause of the accident.[32] One judge thought defendant's speed a contributing cause.

Stanley v. South Carolina State Highway Dep't[33] involved a suit by a plaintiff on the basis of a statute permitting any person who suffers injury or damage by reason of a defect in a state highway to sue the department.[34] The plaintiff alleged that underbrush obstructed his view at an intersection and as a result the plaintiff drove into the intersection and collided with another automobile. The Supreme Court of South Carolina strictly construed the statute permitting suit against the Highway Department and held that the growth of underbrush on the highway right-of-way did not constitute a "defect in the highway" which would entitle the plaintiff to sue.[35]

E. Contributory Negligence

An action for damages was brought in *Benton v. Davis*[36] for injuries sustained by a passenger in an automobile, owned by one defendant, borrowed by another and operated by a third defendant. There was evidence that the passenger and four others were riding in the automobile. The five were drinking and the passenger knew the driver to be a reckless driver and did not avail himself of the opportunity to leave. The court, in view of this evidence, found that the case was sufficient to be submitted to the jury on the question of contributory recklessness.[37]

Three cases during the survey period have indicated that plaintiffs injured at railroad crossings will be held to a high standard

32. *See* Horton v. Greyhound Corp., 241 S.C. 430, 128 S.E.2d 776 (1962).

33. 153 S.E.2d 687 (S.C. 1967).

34. S.C. CODE ANN. § 33-229 (1962).

35. *Accord,* Phillips v. State Highway Comm'n, 146 Kan. 112, 68 P.2d 1087 (1937).

36. 150 S.E.2d 235 (S.C. 1966).

37. S.C. CODE ANN. § 46-801 (1962) provides that no guest can recover from his host driver or owner without a showing of intentional or reckless conduct. The South Carolina cases have consistently held that contributory recklessness is a valid defense. *See, e.g.,* Jackson v. Jackson, 234 S.C. 291, 108 S.E.2d 86 (1959).

of care despite the absence of the required statutory warnings[38] by crossing trains. In *Byrd v. Atlantic Coast Line Railroad Company*[39] the plaintiff was driving at a speed of between fifteen and twenty miles per hour and applied her brakes prior to the sounding of the statutory warning. Nevertheless the court found the plaintiff was guilty of contributory "gross or wilful negligence"[40] because she had an unobstructed view of the track on a clear day and was familiar with the crossing and the absence of a regular schedule for train crossings.

In *Connelly v. Southern Railway Company*[41] the court found that the plaintiff had failed to exercise even slight care in approaching a railroad crossing and remanded for a direction of verdict for the defendant. The plaintiff had "failed to use his senses of sight and hearing to the best of his ability under the existing circumstances,"[42] by approaching familiar tracks at twenty-five miles per hour and by making no effort to observe the approach of a train from his left. In *Osborne v. Southern Railway Company*[43] another plaintiff was found guilty of gross contributory negligence by the district court. Although the train was travelling at twenty miles per hour, the plaintiff approached the crossing at thirty-five miles per hour. Although it was possible to see the train at a distance of 700 to 800 feet, she saw it when only fifty feet from the crossing. The plaintiff was familiar with the crossing and the weather was clear. A warning to future plaintiffs familiar with crossings was sounded: "Rather than [obstructions of her view excusing] her from seeing the train, they only imposed a greater duty upon her to approach the crossing with more caution for her own safety."[44] Thus this element sometimes thought to be favorable to plaintiffs[45] may be used against them in the future.

38. S.C. CODE ANN. § 58-743 (1962). A bell . . . or whistle . . . shall be rung . . . or sounded at the distance of at least five hundred yards from the place where the railroad crosses any public highway . . . and shall be kept ringing or whistling until the engine . . . has crossed such highway. . . .

39. 154 S.E.2d 1 (S.C. 1967).

40. This is the standard required to prevent liability of the railroad when it has failed to sound the statutory warning. S.C. CODE ANN. § 58-1004 (1962).

41. 154 S.E.2d 569 (S.C. 1967).

42. *Id.* at 571.

43. 263 F. Supp. 718 (1967).

44. *Id.* at 723.

45. Connelly v. Southern Ry., 154 S.E.2d 569 (S.C. 1967), *supra*, appears to intimate that an obstructed view might have excused the plaintiff's conduct. *See also* Cook v. Atlantic Coastline R.R., 196 S.C. 230, 13 S.E.2d 1 (1941) in which a plaintiff familiar with the crossing tried to prove the presence of obstacles.

In *Easterlin v. Green*[46] the court held that the failure of a pedestrian to comply with the statute requiring pedestrians to walk on the left side of the road facing oncoming traffic[47] was not contributory negligence when the pedestrian was in the south bound lane and was struck by a north bound vehicle.

F. Comparative Negligence

In *Sturken v. Richland Oil Company*[48] the Supreme Court of South Carolina held that the instructions to the jury on contributory negligence constituted prejudicial error to the defendant corporation. The court stated:

> Prejudicial error is apparent when we consider that under the instructions the defense of contributory negligence may have been rejected by the jury on findings that both parties were guilty of causal negligence, but that the defendant was guilty of a higher degree or "grade" of negligence than was the plaintiff, even though neither party was found to be guilty of willfulness or wantoness.[49]

G. Family Purpose Doctrine

In the case of *Reid v. Swindler*[50] the administrator of the estate of Elizabeth Louise Reid, a six year old girl who was killed as a result of being struck by an automobile driven by Timothy M. Swindler, a minor, brought action for the alleged wrongful death. The court based its decision upon the family purpose doctrine. Liability of a parent is established by this doctrine when that parent owns, maintains, or furnishes an automobile for general family use.[51] There was evidence that Timothy M. Swindler lived with his parents and customarily drove the car to high school each day and was on his way home from school when the accident occurred. There was additional evidence that Mrs. Swindler purchased the car and took the certificate of title and insurance in her own name. The court held that the trial judge was required to submit the question of liability of the mother under the family purpose doctrine to

46. 248 S.C. 389, 150 S.E.2d 473 (1966).
47. S.C. CODE ANN. § 46-581 (1962).
48. 248 S.C. 355, 150 S.E.2d 341 (1966).
49. *Id.* at 357, 150 S.E.2d at 341.
50. 154 S.E.2d 910 (S.C. 1967).
51. *See, e.g.,* Norwood v. Coley, 235 S.C. 314, 111 S.E.2d 550 (1959).

the jury and that the evidence was sufficient to warrant a verdict against her.

H. Imputation of Driver's Negligence to Passenger

The plaintiff in *Stone v. Barnes*[52] brought action to recover damages for personal injuries sustained in an intersection collision with a truck owned by the defendant. The plaintiff was being driven to the hospital to secure treatment for a severed thumb when the accident occurred. There was conflicting evidence in regard to the speed of the two vehicles, but the defendant testified that the automobile in which plaintiff was riding entered the intersection at a speed of 50 miles per hour. There was also evidence that the passenger could observe the operation of the automobile and saw the flashing warning signal at the intersection. The court, while reversing the lower court decision because of the failure to submit the question of contributory negligence to the jury, stated that:

> [e]ven though the contributory negligence of a driver of a motor vehicle is not imputed to the occupant thereof, he must exercise ordinary care for his own safety; and where the failure of the occupant to exercise ordinary care contributes proximately to cause his injuries, he is guilty of contributory negligence which will bar him of recovery. Generally the issue is one of fact for the jury to determine in the light of all the facts and circumstances existing at the time.[53]

I. Proximate Cause

In *Childers v. Gas Lines, Inc.*[54] a motorcyclist was injured when his motorcycle collided with debris from a wrecked sign left at a construction site by the defendant gas company. There was evidence that a car had struck a traffic sign left on the site by the company. Shortly thereafter the plaintiff collided with the debris from the sign. There was also evidence that the sign was on a traveled area and was unlighted. The supreme court found that the evidence gave rise to an inference of negligence on the part of the gas company and that the intervening act of an automobile striking the sign was not an unforeseeable

52. 248 S.C. 28, 148 S.E.2d 738 (1966).
53 *Id.* at 35, 148 S.E.2d at 740.
54. 248 S.C. 316, 149 S.E.2d 761 (1966).

intervening cause and that the issue of proximate cause was properly submitted to the jury.

Lorick v. United States[55] involved three actions for damages allegedly caused by the overflight of military aircraft. The plaintiffs brought action under Federal Tort Claims Act[56] to recover damages to houses and a fish pond. The court stated that the infliction of damages by the operation of an airplane is a wrongful act and in itself will give rise to liability and that it is not necessary to prove negligence in the operation of the aircraft. However, it is essential to show a causal connection between the overflight of the aircraft and the property damage.[57] In the present case, in light of the evidence presented, the court found that the nature of the damages sustained negated any conclusion that they were caused by a "sonic boom" or that the overflight was a proximate cause of the damage.

II. Economic Torts

In *Serino v. Dun & Bradstreet, Inc.*[58] the plaintiff brought an action for damages resulting from a negligent misstatement by the defendant credit reporting agency. The defendant had issued reports that the plaintiff was a partner in a business with her son. As a result the plaintiff incurred attorney's fees in defending herself from the claims of her son's business creditors and lost a loan she had made to the business. The district court, after noting that the defendant was under some duty to exercise due care in regard to the plaintiff, recognized the defense of qualified privilege. Confronted with this defense, the plaintiff had to prove actual malice on the defendant's part. Although no case could be found applying the defense of qualified privilege to a negligence action, the court felt that all of the policy reasons giving rise to the defense in a defamation action were equally applicable to a negligence action.[59] In light of this defense, and since the plaintiff introduced no evidence of malice, the defendant's motion for a judgment notwithstanding the verdict was granted.

55. 267 F. Supp. 96 (D.S.C. 1967).

56. 28 U.S.C. §§ 2671-80 (1964).

57. S.C. Code Ann. § 2-6 (1962) provides for absolute liability for property damage caused by the flight of an aircraft.

58. 267 F. Supp. 396 (D.S.C. 1967).

59. The court is seemingly unconcerned that a requirement of a showing of malice is inconsistent with a negligence standard.

III. PERSONAL TORTS

A. Slander

In *Dauterman v. The State-Record Company*[60] the plaintiff was shot by his wife. The defendant published a police report that was taken directly from Mrs. Dauterman and in her own words saying that her husband "slapped their baby" and that "she and her husband had been drinking quite a bit." The South Carolina Supreme Court held that the statements in the publications were not libelous. The court felt that the statement that the plaintiff had "been drinking quite a bit" was substantially true. As to slapping the baby, the court found that a false statement that a parent on an isolated occasion slapped a child was not actionable.

B. Invasion of Privacy

The plaintiff in *Harrison v. Humble Oil & Refining Company*[61] brought action to recover for invasion of privacy. The plaintiff was indebted to the defendant and the defendant telephoned the plaintiff's employer and indicated that he wanted to talk with the plaintiff in regard to the debt. It was conceded that an unwarranted invasion of privacy will support an action for damages in South Carolina[62] but the court held that the mere communication to a debtor's employer of the existence of the debt will not support an action for invasion of privacy.[63]

C. Malicious Prosecution and Abuse of Process

The plaintiff in *Huggins v. Winn-Dixie Greenville, Inc.*[64] brought action for malicious prosecution and abuse of process and the plaintiff received a verdict on the second cause of action and the defendant appealed. The plaintiff had been arrested for shoplifting when he allegedly mistakenly forgot to pay for some ham he had taken from the Winn-Dixie store counter and refused to pay ten dollars for things the store manager felt he had taken in the past. The South Carolina Supreme Court noted

60. 154 S.E.2d 919 (S.C. 1967).

61. 264 F. Supp. 89 (D.S.C. 1967).

62. *See, e.g.*, Meetze v. Associated Press, 230 S.C. 330, 95 S.E.2d 606 (1956); Holloman v. Life Ins. Co., 192 S.C. 454, 7 S.E.2d 169 (1940).

63. This is the settled rule. *See* W. PROSSER, LAW OF TORTS 835, n.83 (3d ed. 1964).

64. 153 S.E.2d 693 (S.C. 1967).

the distinction between action for malicious prosecution and one for abuse of process in

> that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect—the improper use of a regularly issued process.[65]

The court felt that the case should have gone to the jury on the question of whether the criminal process of the court was used to coerce the plaintiff into paying the ten dollars. However, the court reversed the lower court decision on the grounds that the trial judge's charge that an officer could not arrest a citizen for shoplifting without a warrant was prejudicial error because the legality of the arrest was not in issue and the jury might conclude that the absence of a warrant would constitute a basis for the action.[66]

65. *Id.* at 695, *quoting from* 34 AM. JUR., *Malicious Prosecution* § 3 (1941).

66. "Illegal arrest gives rise to a cause of action for false arrest or false imprisonment, but not to one for abuse of process." Huggins v. Winn-Dixie Greenville, Inc., 153 S.E.2d 693, 697 (S.C. 1967).